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8 UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF OREGON

10 In Re:) Bankruptcy Case
11 JAMIE ANNE SCHULKE,) No. 09-65100-fra13
12) MEMORANDUM OPINION
Debtor.)

13 The Debtor filed a motion for an order allowing her to retain
14 her recently received tax refund in order to pay for unanticipated
15 expenses. A hearing was held on April 14, 2010 at which I ruled that the
16 motion would be denied without prejudice to the filing of a modified
17 plan. I also indicated that I would expand upon my ruling in written
18 form. This Memorandum Opinion fulfills my responsibility in that regard.

19 DISCUSSION

20 The Debtor filed a chapter 13 bankruptcy petition and a plan of
21 reorganization on September 22, 2009. An order confirming plan was
22 entered on January 27, 2010. The chapter 13 plan as confirmed provides
23 at ¶ 1(c) that all net tax refunds for both pre-petition and post-
24 petition tax years be tendered to the trustee during the 36 months of the
25 Plan. The order confirming plan requires that the Debtor timely file all
26 required tax returns and provide copies to the Trustee immediately upon

1 filing. Tax refunds received during the term of a chapter 13 plan are
2 part of the plan payment required of a debtor because receipt of a tax
3 refund indicates overwithholding of taxes by the debtor and should
4 rightly be included in disposable income.

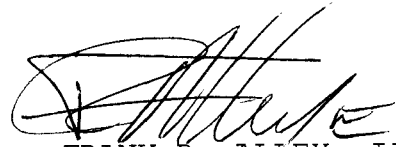
5 On March 19, 2010, the Debtor filed the motion for an order
6 allowing her to retain her 2009 net tax refund. The motion indicates
7 that the money is needed to pay for surgery for her husband and to pay
8 her housing expense and make up for the loss in her food stamp
9 eligibility and benefits. At the hearing on the motion, Debtor's
10 attorney indicated that the refund is approximately \$4,000 and agreed
11 with the Trustee that additional information regarding the refund and its
12 use is needed.

13 11 U.S.C. § 1329(a) provides, in part, that a modified plan may
14 be filed at the request of the debtor, the trustee, or a holder of an
15 allowed unsecured claim to (1) increase or reduce the amount of payments
16 on claims" Debtor's motion seeks to do just this - it reduces by
17 approximately \$4,000 the amount that would otherwise be available for the
18 payment of allowed unsecured claims. Because this is a material amount,
19 it is appropriate that the change be made in the context of a modified
20 plan. A modified plan will allow interested parties to determine how the
21 modification affects their interests, where a motion generally would not.
22 This will give interested parties a chance to challenge the modification
23 and, if there are no objections to its confirmation and it otherwise
24 meets the requirements of the Code, the plan as modified becomes the plan
25 of reorganization without further hearing. 11 U.S.C. § 1329(b)(2).

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1 CONCLUSION

2 Where a debtor seeks to retain a tax refund in contravention of
3 his or her chapter 13 plan and the amount is not insignificant, a
4 modified plan should be filed. I leave it to the trustee to determine
5 whether the amount of the tax refund is material. In those instances
6 where a small tax refund is determined by the trustee to be immaterial,
7 the trustee and debtor may submit a stipulated order modifying the plan.
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11 FRANK R. ALLEY, III
12 Bankruptcy Judge
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